

Louis Flores
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Jackson Heights, New York 11372
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1 (929) 279-2292

13 November 2017

Honorable Colleen McMahon, Chief U.S. District Judge,
United States District Court - Southern District of New York,
500 Pearl Street,
New York, New York 10007-1312.

Dear Hon. Judge McMahon :

**Re : Louis Flores v. United States Department of Justice
No. 17-CV-0036 (Koeltl, J.)**

I am *pro se* Plaintiff appearing *in forma pauperis* in the above-captioned case.

Plaintiff respectfully requests that Your Honour enter an Order, staying the above proceedings, pending the outcome of Plaintiff's appeal to the Second Circuit. Plaintiff filed a Notice of Appeal on 30 October 2017. (Dkt. No. 33). Plaintiff is appealing an Order entered by the Hon. Judge **John Koeltl**. (Dkt. No. 30). Form D-P is due 14 days after the filing of the Notice of Appeal. Plaintiff's entire case on appeal is based on the Arguments made at the Initial Conference. However, the relevant portion of the Arguments made during the Initial Conference, upon which Plaintiff's entire appeal's case is based, has been **stricken from the record without any explanation**. The Court Reporter has referred Plaintiff to Judge's chambers. A phone call placed by Plaintiff to Judge's chambers on Thursday, 09 November 2017, was never returned by **Don Fletcher**, the Judge's courtroom administrator. Because the Hon. Judge Koeltl knows that Plaintiff is challenging prejudicial statements His Honour made during the Initial Conference, the Judge's chambers are unwilling to "**correct the record**" for the Court Reporter. Plaintiff has previously brought concerns to Your Honour's attention. (Dkt. Nos. 25, 27). Your Honour never responded to Plaintiff's requests to **appoint a new judge** to administer this civil litigation based on the **prejudicial statements** made by the Hon. Judge Koeltl during the Initial Conference. Because of the Judge's chambers refusal to "correct the record" of the Initial Transcript, Plaintiff will be filing a defective Form D-P with the Second Circuit, noting the defect in the Transcript of the Initial Conference. Because of the misconduct of Judge's chambers, Plaintiff's **due process rights will now be violated in two judicial proceedings** : (i). in the instant case, before the U.S. District Court, and (ii). in the appeal's case before the Second Circuit. Before Judge's chambers engages in further misconduct, Plaintiff respectfully requests that Your Honour *please enter a stay in the proceedings* before this U.S. District Court, until Judge's chambers can account for the incomplete Transcript of the proceedings during the Initial Conference.

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In the time since Plaintiff announced his intention to file the Notice of Appeal, Plaintiff once again offered to settle this civil lawsuit. *See Exhibit.* Plaintiff reiterated that Defendant has admitted that the U.S. Attorney's Office has **a policy governing the livestreaming of press conferences** given by the top Federal prosecutor for the U.S. Attorney's Office, presently Acting U.S. Attorney **Joon Kim**. Although Plaintiff filed this lawsuit to seek the release of speech records of former U.S. Attorney **Preet Bharara**, Plaintiff has offered to settle this lawsuit numerous times largely based on the enactment of a policy governing **the proactive disclosure of records of speeches** given by the top Federal prosecutor (which is not the same as press conferences). However, as stated by Plaintiff, Defendant feels it is under no obligation to comply with **the Freedom of Information Act ("FOIA")** or to settle this lawsuit so long as the Hon. Judge Koeltl continues to administer this civil litigation with a mindset of protecting the reputation of the U.S. Attorney's Office as a consideration before ordering Defendant to comply with FOIA, according to the statements made by His Honour during the Initial Conference but which are now stricken from the Transcript of the Initial Conference. A stay of the proceedings entered by Your Honour would give Plaintiff more time to meet and confer with Defendant to settle this lawsuit, thereby preventing the Hon. Judge Koeltl from **engaging in more misconduct** in His Honour's misguided attempt to protect the reputation of the U.S. Attorney's Office.

It should be a concern to the Court that the Hon. Judge Koeltl ruled on my motion that he be replaced as administrating this civil lawsuit, saying I had no basis for my motion -- at the same time when His Honour has **exclusive discretion** over the content of the Transcript of the Initial Conference, thereby ensuring that I have no basis for my motion. The Hon. Judge Koeltl has, in the past, faced public criticism over **showing bias to one party over another**. *See Daniel Beekman, Federal judge accused of acting like defense lawyer for Yeshiva University in sexual-abuse suit, The New York Daily News (Apr. 3, 2014), <http://www.nydailynews.com/new-york/judge-accused-favoring-college-sexual-abuse-case-article-1.1743874>.* Plaintiff has previously raised other concerns about the Hon. Judge Koeltl's **bias against activists**, generally. Accordingly, Plaintiff respectfully requests that Your Honour enter an Order, staying the instant proceedings until : (i). Judge's chambers can account for the incomplete Transcript of the Initial Conference ; (ii). the outcome of Plaintiff's Appeal is reached ; or (iii). Defendant settles this lawsuit, thus preventing the Hon. Judge Koeltl from engaging in more misconduct. Your Honour must act to protect the reputation of Hon. Judge Koeltl, if there is any left to protect.

Respectfully submitted,



Louis Flores

cc : Rebecca Tinio, Assistant U.S. Attorney (via E- Mail only)

P.S. The Second Circuit has not mailed to me my packet of forms for my Appeal. why ?

EXHIBIT

Louis Flores <louis.flores@progressqueens.com>

11/3/2017 8:52 AM

RE: Transcripts : Flores v. DOJ : In preparation for Appeal : Notice of Appeal

To Tinio, Rebecca (USANYS) <rebecca.tinio@usdoj.gov> Copy Louis Flores <louis.flores@progressqueens.com>

Dear Ms. Tinio :

Are you attesting that the Transcripts are complete ?

May I remind you that you are an officer of the Court. It is your duty to not accept misconduct or violations of public ethics or violations of professional responsibility.

It was in your presence during the Initial Conference when the Judge said one factor in deciding whether he would order the DOJ to release all the records or to comply with FOIA was his concern over protecting the reputation of the U.S. Attorney's Office. I have stated such in many e-mails to you and in my articles, and never once have you or the Court disputed my assertions. But now that I am appealing an Order and a Transcript of the Initial Conference has been provided, that assertion by the Judge is all of a sudden omitted from the Record ? This looks very suspicious.

Given that you have never disputed what the Judge said, are you now saying that the Judge never said during the Initial Conference that he would protect the reputation of the U.S. Attorney's Office rather than to order the Agency to comply with FOIA ?

As if this controversy would not get worse, the Court Reporters' Office has instructed me to take this issue up with the Judge. How is a Judge, who has expressed bias against Plaintiff, supposed to be partial when Plaintiff challenges the Judge over His Honour's statements that have been omitted from the Transcript ?

Before I go down this road and charge that the Judge is engaged in misconduct and a cover-up, I once again ask you to help me please settle this FOIA Lawsuit. As you know, we are very close to settling this FOIA Lawsuit, but for you to release to me the Livestream policy of the U.S. Attorney's Office, so I can see whether it would apply to speeches given by the U.S. Attorney (speeches being separate from press conferences). Given that I know that a Livestream policy exists, and given that the Acting U.S. Attorney has invoked that policy for at least one press conference of which I'm aware, it would stand to reason that it might be possible to settle this lawsuit without my having to raise issues of the Judge's misconduct.

As an officer of the Court, it is your duty to uphold the integrity of your Office and of the U.S. District Court. Look at how the Judge, in his own misguidance, is willing to engage in unethical conduct. You can help the Judge stop engaging in misconduct if you can settle this FOIA Lawsuit. If I do not hear from you by the end of today about how we can settle this FOIA Lawsuit, I will have no choice but to write to the Chief U.S. District Court Judge and the grievance committee and the Appeals Court and note the misconduct being engaged in by the Judge. If you stay silent about this, you will be complicit in this misconduct. Nobody who cares about there being integrity in your Office or with the District Court would want that for you.

I am certain that the Judge feels he has to "protect" your Office from the Agency's pattern and practise of violating FOIA. Are you going to allow a Judge to ruin his career over his need to "protect" your Office from your Agency's own refusal to comply with FOIA ? Not only will the Judge diminish the good work otherwise done by the other fair and impartial justices of the U.S. District Court, but the Judge's misconduct will also raise red flags about why he feels the need to "protect" your Office. Please, I have seen so much misconduct in New York politics -- please do not add to that by doing nothing and allowing the Judge to engage in unethical conduct.

As I have stated time and time again, it was never my intention for us to reach a point of legal loggerheads over this litigation. The right thing to do here is to reach an amicable settlement, as it has always. As I have stated before, if, at times, I have had to engage in activism in respect of this FOIA Lawsuit, it was to compel Agency compliance with FOIA. That is all I seek. Look at how the Judge is willing to ruin his career, tarnish his reputation, and to diminish the reputation of the District Court -- all because your Office refuses to settle this FOIA Lawsuit. If you do nothing and allow this case to proceed, as is, this will be a huge ethical dilemma for you to have to bear.

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On October 30, 2017 at 6:25 PM Tinio, Rebecca (USANYS) wrote:

Mr. Flores, thank you for your email. No, I am not aware of any alterations made to these transcripts since they were sent by the SDNY court reporters, or at all.

Best regards,

Rebecca S. Tinio
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
p: (212) 637-2774
f: (212) 637-2702

From: Louis Flores [mailto:louis.flores@progressqueens.com]
Sent: Monday, October 30, 2017 2:18 PM
To: Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>
Cc: Louis Flores <louis.flores@progressqueens.com>
Subject: RE: Transcripts : Flores v. DOJ : In preparation for Appeal : Notice of Appeal

Have these transcripts been altered or corrected in anyway since the first preparation by the Court reporter ? If so, I want to see any erratta sheets that were submitted by any person, including the Judge or anybody in the Judge's chambers or anybody from the U.S. Attorney's Office, prior to my receiving these transcripts.

Thank you.

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On October 30, 2017 at 11:20 AM "Tinio, Rebecca (USANYS)" <Rebecca.Tinio@usdoj.gov> wrote:

Mr. Flores, attached please find the transcripts of the two conference with Judge Koeltl in this case, which we received from the court reporters this morning.

Regards,

Rebecca S. Tinio
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
p: (212) 637-2774
f: (212) 637-2702

From: Louis Flores [louis.flores@progressqueens.com]
Sent: Monday, October 30, 2017 8:21 AM
To: Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>
Cc: Louis Flores <louis.flores@progressqueens.com>
Subject: RE: Transcripts : Flores v. DOJ : In preparation for Appeal : Notice of Appeal

Your service copy of the soft copy of today's filing.

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On October 19, 2017 at 5:39 PM "Tinio, Rebecca (USANYS)" <Rebecca.Tinio@usdoj.gov> wrote:

Mr. Flores,

Thank you for your email. We understand from speaking with the SDNY court reporters' office that they do not provide sound recordings. As the Court ordered, we have ordered the two transcripts on a 7-day expedited basis and will provide them to you as soon as we receive them.

I believe the judge misspoke or may have slightly misunderstood – we did not request the conference with the Court, and there is no correspondence or request to the Court that we have not provided to you.

Regards,

Rebecca S. Tinio
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
p: (212) 637-2774
f: (212) 637-2702

From: Louis Flores [louis.flores@progressqueens.com]
Sent: Thursday, October 19, 2017 2:40 PM

To: Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>
Cc: Louis Flores <louis.flores@progressqueens.com>
Subject: Re: Transcripts : Flores v. DOJ : In preparation for Appeal

Hi,

I left a voice-mail message for Don Fletcher, the Hon. Judge Koeltl's courtroom case manager, in which I requested the audio files of the Initial Conference and of Today's conference, so that I have something to compare against the Transcripts that you will have your courtroom transcriber prepare. If necessary, I plan to file errata sheets to make sure that the record is clear.

At Today's conference, the Judge said you made a request for today's Court Conference to ask for a briefing schedule for your anticipated summary judgment motion. Why wasn't I copied on or notified of your request? Did you make this request in spite of the fact that I had an outstanding request with the Chief U.S. District Court judge about my judicial bias concerns?

As an officer of the Court, I expect you and the U.S. Attorney's Office to abide by professional ethics and professional responsibility; that is your obligation.

Thank you.

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On October 19, 2017 at 1:39 PM Louis Flores <louis.flores@progressqueens.com> wrote:

Dear Ms. Tinio :

I want electronic recordings of the Initial Conference and of Today's hearing, and I want to be able to review the transcripts against the audio recordings and an opportunity to file with the stenographer my own errata sheet, if necessary.

Thank you.

Louis Flores
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS FLORES,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

17-CV-0036 (JK)

**AFFIRMATION
OF SERVICE**

I, **LOUIS FLORES**, declare under penalty of perjury that I have served a copy of the attached **PLAINTIFF'S LETTER REQUEST FOR A STAY OF PROCEEDINGS** by **E-MAIL** to : **REBECCA.TINIO@USDOJ.GOV** upon the following party : Rebecca Tinio, Esq., c/o United States Attorney's Office, Southern District of New York, 86 Chambers Street, 3rd Floor, New York, New York 10007.



Dated : Jackson Heights, New York
13 November 2017

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